APPEAL NO. 93456

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq*. (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, (hearing officer) presiding as hearing officer, with the record being closed on May 11, 1993. He determined that the appellant (claimant) sustained an injury in the course and scope of his employment on October 19, 1991, that the employer did not timely contest and thereby waived the right to contest the compensability of the injury, and that the claimant did not have disability after February 25, 1992. The employer has not filed any appeal or response. Claimant appeals and states his disagreement with a number of the hearing officer's findings of fact and asserts that he was totally disabled from February 25, 1992, and that he is entitled to income benefits. The respondent (carrier) argues that the evidence sufficiently supports the decision of the hearing officer and asks that the decision be affirmed.

DECISION

Finding the evidence sufficient to support the findings and conclusions of the hearing officer, we affirm the decision.

The hearing officer set out in considerable detail a fair and adequate summary of the evidence in this case. We adopt it and incorporate it herein for purposes of this decision. We set forth merely a portion here to provide a framework for our affirmance of the hearing officer. Succinctly, the fact of a compensable injury having been sustained on (date of injury) and that it was not timely contested is not in issue on this appeal, a request for review not having been filed. The only question remaining is whether the claimant had disability after February 25, 1992. There was evidence that the claimant had experienced a problem with his wrist or hand swelling since 1990 but that it did not result in his being off work. In June 1991, after performing duty as a quality control assistant, he was reassigned to production work on an assembly line. He had applied for a position as a mechanic, his qualifications for which were disputed, and was not successful. He had applied for a number of different positions in the past and when he was not selected for the mechanics position, decided to file an Equal Employment Opportunity Commission (EEOC) complaint. The complaint was subsequently dismissed; however, some of the witnesses involved in that investigation gave sworn statements which were admitted at the hearing and which tended to establish that the claimant had planned a scheme that he would file for the mechanic position, file an EEOC complaint when he did not get it, and then claim a repetitive trauma injury involving carpel tunnel syndrome and go on workers' compensation. There was evidence that the claimant purchased an expensive truck one week before he claimed the subject injury, arranged to have disability insurance to make his payments if he were disabled, and indeed subsequently had the payments made by the insurance company. Although not clearly established in the record, his mortgage payments on his home may have had similar disability coverage. There was also evidence that he planned to and did increase his college attendance from three hours to nine hours shortly before February 25, 1992, the date he stopped working. There was also evidence that the claimant's wife was on workers' compensation from an injury with the same employer and that she also attended college.

Once the claimant asserted his injury of (date of injury), the employer went through a series of light duty assignments which included proofreading operations manuals (the claimant subsequently asserted that he could not perform this duty because turning the pages was too difficult for him since he was wearing a splint recommended by the doctor and the splint was apparently mal-fitted). He was subsequently given inspection type duties which involved sitting by an assembly line and pointing out defective products which would be retrieved by someone else. After the claimant claimed he could not perform this light duty either, the employer indicated it did not have any other light duty and the claimant stopped working. He subsequently increased his college attendance, the tuition for which

he covered originally but is now covered by the Texas Rehabilitation Commission. There was also evidence that the claimant continued to have a second job in the evening involving janitorial service which required him to occasionally perform manual labor.

There was some conflict in the medical evidence; however, one medical report indicates that the claimant had "borderline" right carpel tunnel syndrome, another dated February 12, 1992 indicated a diagnosis of "pain multiple sites arm, carpel tunnel right wrist," and one from his treating doctor dated April 22, 1993, indicated the claimant has "multiple crush syndrome which involves multiple compression neuropathies in both his right and left arms." A carrier selected doctor in a report dated March 4, 1993 indicates the claimant had reached maximum medical improvement with a zero percent impairment rating and listing "ASSESSMENT: Bilateral mild carpal tunnel syndrome." There was also a video introduced at the hearing which showed the claimant without any splints on his arms walking on campus carrying a heavy looking brief case or book bag without any apparent difficulty. The claimant acknowledged he could perform such functions at school but not at work because of the particular work conditions which included wearing latex gloves.

It is abundantly clear that the hearing officer did not accord much credibility to the testimony of the claimant regarding disability following February 26, 1992. We do not find any reason or basis in this record to alter his assessment. The 1989 Act provides that the hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). We have steadfastly held that it is the hearing officer's responsibility, and certainly within the hearing officer's authority, to resolve conflicts and inconsistencies in the evidence and testimony of witnesses. Texas Workers' Compensation Commission Appeal No. 92234, decided August 13, 1992; Texas Workers' Compensation Commission Appeal No. 93302, decided June 2, 1993. *See* McGalliard v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986). He can believe all, part or none of the testimony of a witness and may believe one witness and disbelieve others. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Cobb v. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.). Where, as here, there is sufficient evidence to support the findings and conclusions of the hearing officer, and the evidence contrary thereto is not so weak

or against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, there is no sound basis to disturb the decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge